



EDMONDS CITY COUNCIL

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121 5TH AVENUE NORTH • EDMONDS, WA 98020 • PHONE: (425) 771-0248 • FAX (425) 771-0254

October 19, 2016

Maia D. Bellon, Director
WA State Department of Ecology
Attention: Director's Office
PO Box 47600
Olympia, WA 98504-6700

Re: City of Edmonds Shoreline Master Program Comprehensive Update –
City Response to Department of Ecology's Conditional Approval

Dear Ms. Bellon,

The City of Edmonds appreciates the additional time granted by Ecology to fully evaluate and prepare a response to the Department of Ecology's conditional approval of the City's Shoreline Master Program. Since receiving Ecology's conditional approval with eight required changes and one recommended change, the City has spent a significant amount of time evaluating Ecology's required changes including discussing the proposed changes over the course of seven Council meetings and receiving many public comments on Ecology's proposed changes.

The required changes from Ecology can be split into two categories, 1) Requires changes 1 – 5 related to incorporating the recently updated critical area regulations into the SMP and 2) required changes 6 - 8 related to the Urban Mixed Use IV shoreline environment.

Regarding incorporating the critical area regulations into the SMP, the City Council largely agrees with the changes proposed by Ecology with one exception. After the City of Edmonds adopted the updated critical area regulations in May 2016 with Ordinance No. 4026, Ecology released Wetland Guidance for CAO Updates (Publication No. 16-06-001) in June 2016. The wetland regulations in Ordinance No. 4026 and the SMP conditionally approved by Ecology were based on Ecology's Wetland & CAO Updates: Guidance for Small Cities (Publication No. 10-06-002). The City Council has determined to follow the most recent guidance with regards to Best Available Science and the City's development regulations. As a result, Ecology's Wetland Guidance for CAO Updates (Publication No. 16-06-001) is being incorporated into the SMP. Please see Attachment A for the specific alternatives and the rationale for the proposed changes.

The Urban Mixed Use IV changes apply to the area surrounding the Edmonds Marsh, which is an important feature (ecologically and socially) of the Edmonds waterfront area. While the City Council accepts the change related to dropping the interim designation for the Urban Mixed Use IV shoreline environment, the City Council does not believe Ecology's proposed setback/buffer in the UMU IV environment are consistent with the Shoreline Management Act, Shoreline Master Program guidelines, or the best available science and wetland guidance in Ecology's Wetland Guidance for CAO Updates (Publication No. 16-06-001). The City Council is proposing an alternative setback/buffer for the UMU IV environment and establishing an alternative threshold for buffer establishment. The City's proposed



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alternatives are included in Attachment A with an expanded rationale for the City's proposed alternative included to required changes 7 and 8 in Attachment B.

Finally, the City acknowledges Ecology's recommended change to allow residential development with the Urban Mixed Use IV environment but declines to implement this change at this time. Please accept this letter along with Attachment A and B as the City of Edmonds' response as required by RCW 90.58.090(2)(e).

The City of Edmonds appreciates the efforts of David Pater, Paul Anderson and Joe Burcar in this update and their attendance at Council meetings as the City has worked through the SMP update process.

Sincerely,

Kristiana Johnson
City of Edmonds Council President

Cc: Dave Earling, City of Edmonds Mayor
David Pater, Ecology, Shoreline Planner
Joe Burcar, Ecology, SEA Section Manager
Paul Anderson, Ecology, Wetlands/401 Unit Supervisor

ITEM	SMP PROVISION	TOPIC	Ecology Required change from June 27,2016 Conditional Approval Format Changes [<u>underline</u> -additions; striketrough -deletions]	City of Edmonds Response/Alternative Proposal	City of Edmonds – Discussion/Rationale
1.	24.40.020 Critical Areas	Critical Areas Ordinance Referencing	B. The City of Edmonds Critical Area Ordinance, as codified in Chapters 23.40 through 23.90 ECDC (dated November 23, 2004, Ord. 3527) (<u>May 3, 2016, Ord 4026</u>). are herein adopted as a part of this Program, except for the specific subsections list below in ECDC 24.40.020.D. All references to the City of Edmonds Critical Area Ordinance in this Program are for this specific version. As a result of this incorporation of the Edmonds Critical Area Ordinance, the provisions of Chapters 23.40 through 23.90 ECDC, less the exceptions listed in ECDC 24.40.020.D, shall apply to any use, alteration or development within shoreline jurisdiction whether or not a shoreline permit or written statement of exemption is required. In addition to the critical area regulations in Chapters 23.40 through 23.90 ECDC (Appendix B) of this Master Program), the regulations identified in this section also apply to critical areas within shoreline jurisdiction. Where there are conflicts between the City of Edmonds Critical Area Ordinance and this Shoreline Master Program, provisions of the Shoreline Master Program shall prevail.	The City of Edmonds accepts this required change.	
2.	Appendix B	SMP Critical Area Regulations	Replace Appendix B containing the critical area regulations dated November 23, 2014, Ordinance 3527 with critical area regulations (minus exceptions noted in item 4 below) dated May 3, 2016, Ordinance 4026.	The City of Edmonds accepts this required change with the modified exceptions list in item 4 below.	As a result of incorporating the Department of Ecology’s Wetland Guidance for CAO Updates (Publication No. 16-06-001) into the SMP, the CAO exceptions in 24.40.020 were reviewed. The critical area regulations in Appendix B will not include the provisions identified in item 4 below.
3.	24.40.020 Critical Areas	CAO provisions triggered by a shoreline variance	1. Wetlands: a. ECDC 23.50.040.F.3. Any shoreline project that proposes going beyond a 25% buffer reduction through the mechanisms described in ECDC 24.40.020.E.3 would require a shoreline variance. No variance is required for wetland buffer reduction consistent with ECDC 24.40.020.E.3. b. ECDC 23.80.070.A.1.b & A.2: Buffer reduction and alterations 3. Fish and Wildlife Habitat Conservation Areas a. ECDC 23.90.040.D.2: Reduced buffer widths b. ECDC 23.90.040.D.4: Additions to structures existing within stream buffers	The City of Edmonds accepts this required change with minor modifications and indicated below: C. The specific provisions of the Critical Area Ordinance listed below may only be implemented within shoreline jurisdiction through the shoreline variance process; 1. Wetlands: a. ECDC 23.50.040.F.3. Any shoreline project that proposes going beyond a 25% buffer reduction through the mechanisms described in ECDC 24.40.020.E.3 would require a shoreline variance. No variance is required for wetland buffer reductions consistent with ECDC 24.40.020.E.3. 2. Geologically Hazardous Areas: a. ECDC 23.80.040.B.1 & 2: Allowed activities in geologically hazardous areas b. ECDC 23.80.070.A.1.b & A.2: Buffer reduction and alterations	The City accepts this change in that no critical area provisions will require a shoreline variance. Ecology’s required change did not include the introductory sentence noting these provisions required a shoreline variance. That sentence is shown as being deleted. Geologically Hazardous provisions were not shown in Ecology’s required change. However, allowed activities in geologically hazardous areas (ECDC 23.80.040.B.1 & 2 were moved to the exceptions list in item 4 below. The double-line strike-through indicates the move.

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				3.Fish and Wildlife Habitat Conservation Areas a.ECDC 23.90.040.D.2: Reduced buffer widths b.ECDC 23.90.040.D.4: Additions to structures existing within stream buffers	
4.	24.40.020 Critical Areas	CAO Exceptions	<p>D. Exceptions. The specific provisions of the Critical Area Ordinance listed below shall not apply to development within shoreline jurisdiction.</p> <p>1. General Provisions:</p> <p>a. Provisions of chapter 23.40 ECDC relating to reasonable economic use of property do not apply to property with shoreline jurisdiction; specifically ECDC 23.40.000 and ECDC 23.40.210(2).</p> <p>c. ECDC 23.40.210: Variance</p> <p>e. ECDC 23.40.230: Exemptions</p> <p><u>2. Geologically Hazardous Areas:</u></p> <p><u>a. ECDC 23.80.040.B.1 & 2: Allowed activities in geologically hazardous areas</u></p> <p>2. Wetlands:</p> <p>a. ECDC 23.50.010.B: Wetland Ratings</p> <p>b. ECDC 23.50.040.F.1: Standard Buffer Widths</p> <p>c. ECDC 23.50.040.F.4: Wetland Buffer Width Averaging.</p> <p>d. ECDC 23.50.040.F.8.b: Passive Recreation</p> <p>e. ECDC 23.50.040.I: Exemptions</p> <p>f. ECDC 23.50.050.F: Mitigation Ratios</p> <p>g. ECDC 23.50.050.G: Wetlands Enhancement as Mitigation</p>	<p>The City of Edmonds offers the exceptions list below as an alternative:</p> <p>D. Exceptions. The specific provisions of the Critical Area Ordinance listed below shall not apply to development within shoreline jurisdiction.</p> <p>1. General Provisions:</p> <p>a. Provisions of chapter 23.40 ECDC relating to reasonable economic use of property do not apply to property with shoreline jurisdiction; specifically ECDC 23.40.000 and ECDC 23.40.210(2).</p> <p>a. ECDC 23.40.130.D: Monitoring Program</p> <p>b. ECDC 23.40.210: Variance</p> <p>c. ECDC 23.40.220.C.8: Minor Site Investigation Work</p> <p>e. ECDC 23.40.230: Exemptions</p> <p>2. Wetlands:</p> <p>a. ECDC 23.50.010.B: Wetland Ratings</p> <p>b. ECDC 23.50.040.F.1: Standard Buffer Widths</p> <p><u>c. ECDC 23.50.040.F.2: Required Measures to Minimize Impacts to Wetlands</u></p> <p><u>d. ECDC 23.50.040.K: Small, Hydrologically Isolated Wetlands</u></p> <p>c. ECDC 23.50.040.F.4: Wetland Buffer Width Averaging.</p> <p>d. ECDC 23.50.040.F.8.b: Passive Recreation</p> <p>e. ECDC 23.50.040.I: Exemptions</p> <p>f. ECDC 23.50.050.F: Mitigation Ratios</p> <p>e. ECDC 23.50.050.G: Wetlands Enhancement as Mitigation</p> <p><u>3. Geologically Hazardous Areas:</u></p> <p><u>a. ECDC 23.80.040.B.1 & 2: Allowed activities in geologically hazardous areas</u></p>	<p>As a result of incorporating the Department of Ecology's Wetland Guidance for CAO Updates (Publication No. 16-06-001) into the SMP, the CAO exceptions in 24.40.020 were reviewed.</p> <p>General Provisions: Two of the items in the general provisions exemption list were left out of Ecology's required change item 4 (ECDC 23.40.130.D Monitoring Program and ECDC 23.40.220.C.8).</p> <p>ECDC 23.40.130.D requires a monitoring program of not less than five years. SMP contains a monitoring provision that requires monitoring for a period of not less than ten years. Given the SMP contains a separate monitoring program, ECDC 23.40.130.D will be excepted from the CAO in Appendix B of the SMP.</p> <p>ECDC 23.40.220.C.8 (which is ECDC 23.40.220.C.9 in the updated CAO) contains provisions very similar to WAC 173-27-040(m). WAC 173-27-040(m) exempts minor site investigative work from shoreline substantial development permit requirements. ECDC 23.40.220.C.9 allows minor site investigative work without the requirement for a critical area report. Given the intent of the two provisions to allow minor site investigation in preparation for a land use or shoreline permit, and the similar language in each provision, the City of Edmonds is proposing to remove ECDC 23.40.220.C.9 from the exception list.</p> <p>With the incorporation of the Department of Ecology's Wetland Guidance for CAO Updates (Publication No. 16-06-001) into the SMP, certain provisions of the wetlands section in the CAO needed to be excepted from the SMP where there was conflicts with Ecology's Wetland Guidance for CAO Updates.</p> <p>Geologically Hazard Areas shown as a double underline to indicate the move from item 3 above.</p>
5.	24.40.020 Critical Areas	Wetlands	Delete 24.40.020.F(1) – (4). <i>Deletions are not shown in strike-through here to save space.</i>	The City of Edmonds offers the wetland section attached to the end of this table as an alternative to Ecology's required change number 5.	After the City of Edmonds adopted the updated critical area regulations in May 2016 with Ordinance No. 4026, Ecology released Wetland

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					<p>Guidance for CAO Updates (Publication No. 16-06-001) in June 2016. The wetland regulations in Ordinance No. 4026 and the SMP conditionally approved by Ecology were based on Ecology's Wetland & CAO Updates: Guidance for Small Cities (Publication No. 10-06-002). The City of Edmonds desires to follow the most recent guidance with regards to Best Available Science and the City's development regulations. As a result, the City is choosing to incorporate Ecology's Wetland Guidance for CAO Updates (Publication No. 16-06-001) into the SMP.</p> <p>Incorporating the updated wetland guidance into the SMP primarily involves replacing the wetland categorizations and buffer requirements in the SMP. Apart from incorporating the wetland categorizations and buffer requirements into the SMP, the City of Edmonds accepts the deletions of the remaining sections as proposed in Ecology's required change.</p> <p>Ecology's required changed was to delete 24.40.020.F.1 – F.4; however, there is no 24.40.020.F.3 – F.4 in the SMP. The wetland section in the SMP is contained within 24.40.020.F.1 – F.2.</p>
6.	Part III Shoreline Environments 24.30.070 Urban Mixed Use	B. Designation Criteria 5. Urban Mixed Use IV	<p>Urban Mixed-Use IV: The Urban Mixed-Use IV designation is being established as an interim shoreline designation. <u>is appropriate for those areas bordering</u> the Edmonds Marsh. <u>being</u> The marsh was identified as a shoreline of the state is new to this SMP update and was identified as a shoreline of the state late in the planning process. , W <u>with</u> properties within 200-feet of the salt influenced portions of the marsh now under shoreline jurisdiction (where they had not previously been so designated). Specific review of the effects of establishing a shoreline environment on existing and proposed uses around the marsh must be studied.</p> <p>The south side of the marsh has been identified as the future site of the Edmonds Crossing Ferry Terminal which underwent significant environment review with a Final Environmental Impact Statement issued in 2004. On the north side of the Marsh is the Harbor Square commercial development owned by the Port of Edmonds. The SMP update process was delayed to allow the Port of Edmonds time to submit a long planned Harbor Square Master Plan for concurrent review by</p>	The City of Edmonds accepts this required change.	

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			the City of Edmonds. The Port's proposed Harbor Square Master Plan was ultimately not adopted by the City. The Edmonds Marsh is also being studied for potential restoration projects including the daylighting of the Willow Creek outlet as well as the marshes role in the flooding problem at the Dayton Street/State Route 104 intersection and the role the marsh and play in a solution to the flooding problem. Establishing the Urban Mixed Use IV designation as an interim designation will allow the City, in cooperation with property owners, Ecology, scientists, interested agencies/organizations, and members of the public, to carefully review effects of establishing a new shoreline jurisdiction for the area around the marsh on existing and planned development as well as the ecological role the Edmonds Marsh plays in the City of Edmonds. The City intends to study the issues surrounding the Edmonds Marsh and related Urban Mixed Use IV designation for two years from the effective date of this SMP. At the end of the study period, the City will adopt appropriate shoreline environment designation(s) for the area surrounding the Edmonds Marsh including evaluating whether a new designation is needed and whether the entire area should have the same designation.				
7.	Part IV General Policies and Regulations 24.40.090 Shoreline Bulk and Dimensional Standards	Development Standards Table Urban Mixed Use IV		Shoreline Area Designation	The City of Edmonds offers the following as an alternative for the setback/buffer requirement in the Urban Mixed Use IV shoreline environment:		See Attachment B for the rationale behinds the City's alternative setback/buffer for the UMU IV shoreline environment. For every instance in Shoreline Bulk and Dimensional Standards table contained in 24.90.090 where the Urban Mixed Use IV shoreline indicates a shore setback of 100/50, that will be changed to 125/110. This means there will be a requirement for a 110 foot vegetative buffer with an additional 15 foot structural setback for a total of a 125-foot shore setback measured from the edge of the marsh.
		Shore Setback		Urban Mixed Use IV		Shoreline Area Designation	
				Commercial and Light Industrial Development		Urban Mixed Use IV	
		Shore Setback		400/50 <u>65/50</u>	Shore Setback	400/50 <u>125/110</u>	
8.	Part IV General Policies and Regulations 24.40.090 Shoreline Bulk and Dimensional Standards	Development Standards Table Footnotes	18. Setback for <u>new buildings and expansion of buildings</u> new development within the Urban Mixed-Use IV environment is 400 <u>65</u> feet. <u>Redevelopment of greater than 50% for the Harbor Square property within shoreline jurisdiction and development of the site on the south border of the marsh within shoreline jurisdiction</u> require the establishment of a 50-foot vegetation buffer adjacent to the Edmonds Marsh where the vegetative buffer is absent, <u>in combination with a 15 foot structural setback</u> .		The City of Edmonds offers the following as an alternative footnote 18: 18. Setback for new development within the Urban Mixed-Use IV environment is 400 <u>125</u> feet. <u>A 110-foot vegetative buffer is required to be established when an approved master planned development is implemented on the north or south side of the marsh. The 110-buffer may be established in the absence of a master planned redevelopment through a standalone restoration project. New development activities within the Urban Mixed-Use IV environment require the establishment of a 50-foot vegetation buffer adjacent to the Edmonds Marsh where</u>		The Harbor Square site on the north side of the marsh has been developed in accordance with a contract rezone. The existing development cannot be expanded as the limitations of the contract rezone have been met. The Harbor Square site has a comprehensive plan designation of Downtown Master Plan. In order for the Harbor Square site to be redeveloped, the redevelopment will have to be approved through a master planning process. When an approved master plan is implemented, the 110-buffer will be required to be established.

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				the vegetative buffer is absent.	<p>Likewise, the property on the south side of the marsh has a comprehensive plan designation of Master Plan Development and a zoning designation of Master Plan 2. Development on the south side of the marsh will also occur through a master plan process. When an approved master plan implemented on the south side of the marsh, the 110-foot buffer will be required to be established.</p> <p>While buffer establishment is required with an implemented master plan, the 110-foot may be established prior to the implementation of master planned development through a voluntary buffer restoration effort.</p>

City of Edmonds Proposed Alternative to Required Change No. 5 for Wetland Regulations within the SMP.

24.40.020 Critical Areas

F. Wetlands. Wetlands are those areas, designated in accordance with WAC 173-22-035 that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

1. ~~Wetlands shall be rated according to the Washington State wetland rating system for western Washington (Washington State Wetland Rating System for Western Washington—Revised, Ecology Publication #04-06-025) or as revised by Ecology. This document contains the definitions and methods for determining the criteria and parameters defining the following wetland rating categories~~ Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, or as revised and approved by Ecology), which contains the definitions and methods for determining whether the criteria below are met.:
 - a. ~~Category I. Category I wetlands are: 1) relatively undisturbed estuarine wetlands larger than 1 acre; 2) wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as high quality wetlands; 3) bogs; 4) mature and old-growth forested wetlands larger than 1 acre; 5) wetlands in coastal lagoons; or 6) wetlands that perform many functions well (scoring 70 points or more).~~ Category I wetlands are: (1) relatively undisturbed estuarine wetlands larger than 1 acre; (2) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (3) bogs; (4) mature and old-growth forested wetlands larger than 1 acre; (5) wetlands in coastal lagoons; (6) interdunal wetlands that score 8 or 9 habitat points and are larger than 1 acre; and (7) wetlands that perform many functions well (scoring 23 points or more). These wetlands: (1) represent unique or rare wetland types; (2) are more sensitive to disturbance than most wetlands; (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (4) provide a high level of functions.
 - b. ~~Category II. Category II wetlands are: 1) estuarine wetlands smaller than 1 acre, or disturbed estuarine wetlands larger than 1 acre; 2) interdunal wetlands larger than 1 acres; 3) disturbed coastal lagoons or 4) wetlands with a moderately high level of~~

functions (scoring between 51-69 points) Category II wetlands are: (1) estuarine wetlands smaller than 1 acre, or disturbed estuarine wetlands larger than 1 acre; (2) interdunal wetlands larger than 1 acre or those found in a mosaic of wetlands; or (3) wetlands with a moderately high level of functions (scoring between 20 and 22 points).

- c. Category III. ~~Category III wetlands are: 1) wetlands with a moderate level of functions (scoring between 30 and 50 points); or 2) interdunal wetlands between 0.1 and 1 acre in size~~ Category III wetlands are: (1) wetlands with a moderate level of functions (scoring between 16 and 19 points); (2) can often be adequately replaced with a well-planned mitigation project; and (3) interdunal wetlands between 0.1 and 1 acre. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.
- d. Category IV. ~~Category IV wetlands have the lowest levels of functions (scoring fewer than 30 points) and are often heavily disturbed~~ Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that we should be able to replace, or in some cases to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

~~d.e.~~ Illegal modifications. Wetland rating categories shall not change due to illegal modifications made by the applicant or with the applicant's knowledge.

2. Development in designated wetlands within shoreline jurisdiction shall be regulated in accordance with the following:

a. Buffer Requirements. The following buffer widths have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Ecology Publication #14-06-029, or as revised and approved by Ecology). The adjacent land use intensity is assumed to be high.

- i. For wetlands that score 5 points or more for habitat function, the buffers in 24.40.020.F.2.b can be used if both of the following criteria are met:

- A relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any other Priority Habitats as defined by the Washington State Department of Fish and Wildlife.

The corridor must be protected for the entire distance between the wetland and the Priority Habitat by some type of legal protection such as a conservation easement.

Presence or absence of a nearby habitat must be confirmed by a qualified biologist. If no option for providing a corridor is available, 24.40.020.F.2.b may be used with the required measures in 24.40.020.F.2.c alone.

- The measures in 24.40.020.F.2.c are implemented, where applicable, to minimize the impacts of the adjacent land uses.

ii. For wetlands that score 3-4 habitat points, only the measures in 24.40.020.F.2.c are required for the use of 24.40.020.F.2.b

iii. If an applicant chooses **not** to apply the mitigation measures in 24.40.020.F.2.c, or is unable to provide a protected corridor where available, then 24.40.020.F.2.d **must** be used.

iv. The buffer widths in 24.40.020.F.2.b and 24.40.020.F.2.d assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

b. Wetland Buffer Requirements if the measures in 24.40.020.F.2.c are Implemented and Corridor Provided.

	<u>Buffer width (in feet) based on habitat score</u>			
<u>Wetland Category</u>	<u>3-4</u>	<u>5</u>	<u>6-7</u>	<u>8-9</u>
<u>Category I: Based on total score</u>	<u>75</u>	<u>105</u>	<u>165</u>	<u>225</u>
<u>Category I: Bogs and wetlands of High Conservation Value</u>	<u>190</u>			<u>225</u>
<u>Category I: Coastal Lagoons</u>	<u>150</u>		<u>165</u>	<u>225</u>
<u>Category I: Interdunal</u>				<u>225</u>
<u>Category I: Forested</u>	<u>75</u>	<u>105</u>	<u>165</u>	<u>225</u>
<u>Category I: Estuarine</u>	<u>150 (buffer width not based on habitat score)</u>			
<u>Category II: Based on score</u>	<u>75</u>	<u>105</u>	<u>165</u>	<u>225</u>

<u>Category II:</u> <u>Interdunal wetlands</u>	<u>110</u>	<u>165</u>	<u>225</u>
<u>Category II:</u> <u>Estuarine</u>	<u>110</u> (buffer width not based on habitat score)		
<u>Category III (all)</u>	<u>60</u>	<u>105</u>	<u>165</u> <u>225</u>
<u>Category IV (all)</u>	<u>40</u>		

~~b. The standard buffer widths in ECDC 24.40.020.F.2.b below have been establish in accordance with best available science. The buffers are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington state wetland rating system for western Washington.~~

~~i. The use of the standard buffer widths requires the implementation of the measures in ECDC 24.40.020.F.2.c, where applicable, to minimize the impacts of the adjacent land uses.~~

~~ii. If an applicant chooses not to apply the mitigation measures in ECDC 24.40.020.F.2.c, than a 33% increase in the width of all buffer is required.~~

~~iii. The standard buffer widths assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.~~

~~iv. Additional buffer widths are added to the standard buffer widths. For example, a Category I wetland scoring 32 points for habitat function would require a buffer of 225 feet (75 + 150).~~

~~b. Wetland Buffer requirements for wetlands within City of Edmonds shoreline jurisdiction.~~

Wetland Category	Standard Buffer Width	Additional buffer width if wetland seares 21-25 habitat points	Additional buffer width if wetland seares 26-29 habitat points	Additional buffer width if wetland seares 30-36 habitat points
Category I: Based on total score	75 ft	Add 30 ft	Add 90 ft	Add 150 ft
Category I: Bogs	190 ft	NA	NA	Add 35 ft
Category I: Forested	75 ft	Add 30 ft	Add 90 ft	Add 150 ft

Category I: Estuarine	150 ft	NA	NA	NA
Category II (all)	75 ft	Add 30 ft	Add 90 ft	Add 150 ft
Category III (all)	60 ft	Add 45 ft	Add 105 ft	NA
Category IV (all)	40 ft	NA	NA	NA

- c. Required measures to minimize impacts to wetlands. Measures are required, ~~where-if~~ applicable to a specific proposal.

Disturbance	Required measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> • Direct lights away from wetland
Noise	<ul style="list-style-type: none"> • Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the out wetland buffer
Toxic runoff	<ul style="list-style-type: none"> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 feet of wetland • Apply integrated pest management
Stormwater runoff	<ul style="list-style-type: none"> • Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use Low Impact Development techniques (per PSAT publication on LID techniques)
Change in water regime	<ul style="list-style-type: none"> • Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	<ul style="list-style-type: none"> • Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	<ul style="list-style-type: none"> • Use best management practices to control dust
Disruption of corridors or connections	<ul style="list-style-type: none"> • Maintain connections to offsite areas that are undisturbed • Restore corridors or connections to offsite habitats by replanting

d. Wetland Buffer Requirements if the measures in 24.40.020.F.2.c are NOT Implemented or Corridor NOT Provided.

	<u>Buffer width (in feet) based on habitat score</u>			
<u>Wetland Category</u>	<u>3-4</u>	<u>5</u>	<u>6-7</u>	<u>8-9</u>
<u>Category I:</u> <u>Based on total score</u>	<u>100</u>	<u>140</u>	<u>220</u>	<u>300</u>
<u>Category I:</u> <u>Bogs and wetlands of</u> <u>High Conservation</u> <u>Value</u>	<u>250</u>			<u>300</u>
<u>Category I:</u> <u>Coastal Lagoons</u>	<u>200</u>		<u>220</u>	<u>300</u>
<u>Category I:</u> <u>Interdunal</u>				<u>300</u>
<u>Category I:</u> <u>Forested</u>	<u>100</u>	<u>140</u>	<u>220</u>	<u>300</u>
<u>Category I:</u> <u>Estuarine</u>	<u>200</u> <u>(buffer width not based on habitat scores)</u>			
<u>Category II:</u> <u>Based on score</u>	<u>100</u>	<u>140</u>	<u>220</u>	<u>300</u>
<u>Category II:</u> <u>Interdunal wetlands</u>	<u>150</u>		<u>220</u>	<u>300</u>
<u>Category II:</u> <u>Estuarine</u>	<u>150</u> <u>(buffer width not based on habitat scores)</u>			
<u>Category III (all)</u>	<u>80</u>	<u>140</u>	<u>220</u>	<u>300</u>
<u>Category IV (all)</u>	<u>50</u>			

~~d. Where wetland or buffer alterations are permitted by the City of Edmonds, the applicant shall mitigate impacts to achieve no net loss of wetland acreage and functions. Compensatory mitigation shall be provided according to *Wetlands in Washington State, Volume 2: Guidance for Protecting and Managing Wetlands*, Appendix 8 C, Table 8 C11, Ecology Publication #05-06-008, or as revised by Ecology.~~

~~e. Buffer width Reductions Though Buffer Enhancement. At the discretion of the Edmonds development services director, wetland buffer width reductions (or approval of standard buffer widths for wetlands where existing buffer conditions require increased buffer widths) may be granted concomitant to the development and implementation of a wetland buffer enhancement plan for Category III and IV wetlands only. Approval of a wetland buffer enhancement plan shall, at the discretion of the director, allow for wetland buffer with reduction to no less than 25 percent of the standard width; provided, that:~~

~~i. The plan provides evidence that wetland functions and values will be increased or retained through plan implementation to at least the level provided by a standard buffer or through additional mitigation;~~

~~ii. The plan documents existing native plant densities and provides for increases in buffer native plant densities to no less than three feet on center for shrubs and eight feet on center for trees;~~

~~iii. The plan requires monitoring and maintenance to ensure success in accordance with ECDC 24.40.020.E.4; and~~

~~iv. The plan specifically documents methodology and provides performance standards for assessing increases in wetland buffer functioning as related to:~~

~~1. Water quality protection;~~

~~2. Provision of wildlife habitat;~~

~~3. Maintenance of wetland hydrology; and~~

~~4. Restricting wetland intrusion and disturbance.~~

~~f. Wetland Buffer Width Averaging. The director may allow modification of a standard buffer width in accordance with an approved critical areas report and the best available science on a case-by-case basis by averaging buffer widths. Only those portions of a wetland buffer existing with the project area or subject parcel shall be considered for buffer averaging. Averaging of buffer widths may only be allowed where a qualified professional wetland scientist demonstrates that:~~

~~i. It will not reduce the function and value of wetlands or associated buffers;~~

~~ii. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by narrower buffer in other places;~~

~~iii. The total area contained in the buffer area, or the total buffer area existing on a subject parcel for wetland extending off site, after averaging is no less than that which would be contained within a standard buffer; and~~

~~iv. The buffer width at any single location is not reduced to less than 25 percent of the standard buffer width.~~

~~g. Physically Separated and Functionally Isolated Buffers.~~

~~i. Areas which are both physically separated and functionally isolated from a wetland and do not protect the wetland from adverse impacts due to preexisting public roads, structures, or similar circumstances, shall be excluded from the buffers otherwise required by this subsection.~~

~~ii. A critical area report prepared by a qualified professional is required to determine whether the buffer is functionally isolated.~~

~~h. Passive Recreation. The following passive recreation facilities may be permitted within a wetland buffer provided the facilities are designed and in accordance with an approved critical area report:~~

~~i. Walkways and trails; provided, that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent (25%) of the wetland buffer area, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five (5) feet in width for pedestrian use only. Raised boardwalks utilizing non-treated piling may be acceptable;~~

~~ii. Wildlife viewing structures; and~~

~~iii. Fishing access areas down to the water's edge that shall be no larger than six feet.~~

~~i.e.~~ Additions to structures existing within wetlands and/or wetland buffers may be permitted pursuant to ECDC 23.50.040.~~HI~~. Additions to structures within wetlands will also require state and federal approval.

Date: October 14, 2016

To: Washington State Department of Ecology

Copy: Edmonds City Council
Dave Earling, Mayor
Shane Hope, Development Services Director
Kernen Lien, Senior Planner

From: Jeff Taraday, City Attorney

Re: Findings of Fact, Conclusions of Law, and Analysis regarding City of Edmonds' proposed alternatives to Ecology's Required Changes 7 and 8 and consistency of those alternatives with the Shoreline Management Act and the Department of Ecology's adopted guidelines

I. Purpose of this memo

This memo demonstrates how the City of Edmonds' proposed alternatives to Required Changes 7 and 8 are consistent with the Shoreline Management Act and the Department of Ecology's adopted guidance for Shoreline Master Programs. The City's proposed alternatives are necessary because the Department of Ecology's Required Changes 7 and 8 would not satisfy the SMA's no net loss standard or the City's restoration goals for the Edmonds marsh. If the rationale set forth below is adopted by the Edmonds City Council, this memo should be included as Attachment B to Council President Johnson's letter to Department of Ecology, Director, Maia Bellon.

As an alternative to Required Change 7, the City of Edmonds is proposing a 110-foot buffer and a 125-foot setback for the Urban Mixed Use IV (UMU4) environment. This will be referred to as Alternative Change 7.

As an alternative to Required Change 8, the City of Edmonds is proposing that the 110-foot buffer be planted and established in conjunction with a master planned development or redevelopment of the two properties within

the UMU4 environment. This will be referred to as Alternative Change 8. Because the two properties in the UMU4 are separately owned, it is possible that they would plant or otherwise establish their respective buffers at different times. Until that occurs, any existing uses within the adopted buffer would be allowed to continue as nonconforming uses.

While most of the analysis below relates to Alternative Change 7, it should be kept in mind that Alternative Change 8 is the timing mechanism for Alternative Change 7.

II. Findings of Fact demonstrating the consistency of Alternative Changes 7 and 8 with the Shoreline Management Act and the Department of Ecology's adopted guidance

The following findings of fact support the adoption of Alternative Changes 7 and 8.

- A. The Edmonds marsh is a shoreline of the state.
- B. The Edmonds marsh is a Category II estuarine wetland and salt marsh.
- C. The UMU4 environment consists of two properties that abut the Edmonds marsh. The property to the south of the marsh is largely undeveloped. The property to the north of the marsh is developed as a business park known as Harbor Square.
- D. Harbor Square is owned by the Port of Edmonds. The Port had expressed interest in eventually redeveloping Harbor Square into a more intense development. The Port had sought a comprehensive plan amendment to approve the Port's master plan for Harbor Square, but later withdrew that request. There is currently no known timeline for the redevelopment of Harbor Square.
- E. Neither the City or the Department of Ecology have conducted detailed wildlife habitat assessments or wildlife surveys that would provide additional site-specific information about which species are present in the Edmonds marsh and what the buffer those species would need to be protected from redevelopment.
- F. In the absence of such detailed site-specific studies, it is appropriate to rely upon Ecology's guidance documents to establish buffer widths at the planning stage.
- G. The Department of Ecology has published various scientific and technical guidance documents that are intended to be used by cities in the development of critical area regulations and shoreline master programs. The city council reviewed relevant excerpts from these documents before voting to propose Alternative Change 7. Various relevant excerpts from these Department of Ecology publications are excerpted below.

1. [Wetland Guidance for CAO Updates, Western Washington Version, June 2016, Publication No. 16-06-001, Department of Ecology](#)

This document distinguishes Category II estuarine wetlands from Category II interdunal wetlands and other Category II wetlands, where buffer width is based on habitat score. Unlike the other kinds, the buffer for Category II estuarine wetlands does not depend on habitat score. Assuming that certain impact minimization measures are required, the buffer would be 110 feet. The measures include things like ensuring that light, noise, and toxic runoff are directed away from the wetland. If these measures are not implemented, then the buffer would be 150 feet.

2. [Wetlands & CAO Updates: Guidance for Small Cities, Western Washington Version, January 2010, \(1st Revision July 2011\), \(2nd Revision October 2012\), Publication No. 10-06-002, Department of Ecology](#)

This document recommended standard buffer widths of 75 feet for Category II wetlands, with the possibility of additional buffer width being added based on a habitat score. The buffer table in this document does not have a line for Category II estuarine wetlands. The 75-foot buffer figure is for all Category II wetlands, except for interdunal wetlands. The buffers in the city's adopted CAO were based on the guidance from this document. After the CAO was adopted, this document was replaced in June 2016 by the Wetland Guidance for CAO Updates, Western Washington Version.

3. [Wetlands in Washington State, Volume 1, A Synthesis of the Science, March 2005, Publication No. 05-06-006, Department of Ecology](#)

This document contains the following passage discussing the importance of estuarine wetlands:

Estuaries, the areas where freshwater and salt water mix, are among the most highly productive and complex

ecosystems. Here, tremendous quantities of sediments, nutrients, and organic matter are exchanged between terrestrial, freshwater, and marine communities. A large number of plants and animals benefit from estuarine wetlands. Fish, shellfish, birds, and plants are the most visible organisms that live in estuarine wetlands. However, a huge variety of other life forms also live in an estuarine wetland, including many kinds of diatoms, algae and invertebrates.

Estuaries, of which estuarine wetlands are a part, are a “priority habitat” as defined by the state Department of Fish and Wildlife. Estuaries have a high fish and wildlife density and species richness, important breeding habitat, important fish and wildlife seasonal ranges and movement corridors, limited availability, and high vulnerability to alteration of their habitat

4. Wetlands in Washington State, Volume 2, *Guidance for Protecting and Managing Wetlands*, April 2005, Publication No. 05-06-008, Department of Ecology

This document contains the following sections:

A frequent concern about buffers is their applicability to urban and urbanizing areas. The concerns generally fall into two categories: 1) the science on buffers comes largely from agricultural and forestry settings and is perceived to be irrelevant to urban areas; and 2) the need to maximize density of development in urban areas is in direct conflict with the protection of large upland areas around wetlands (and streams).

The concern over the relevancy of the literature on buffers to urban areas is largely unfounded. While most of the studies of buffer effectiveness occur in non-urban settings, the principles are the same. Buffers do not function any differently in urban settings than in rural settings. The same processes of sediment, nutrient, and toxics removal operate similarly in urban areas as they do in rural settings. However, a good stormwater

management program can reduce the need for buffers to perform filtration functions, with the exception of lawns and landscaped areas which drain into wetlands rather than into stormwater collection areas.

The role of buffers in providing needed upland habitat for wetland species and in screening adjacent noise and light is also performed similarly. In fact, a case can be made that buffers in urban areas are even more important from a habitat standpoint because there is little other upland habitat available. The factors that may be different in urban areas are that urban wetlands may perform some functions at a lower level because of degradation, and the range of wildlife species utilizing urban wetlands may be smaller. However, remaining wetlands (and adjacent upland areas) in urban areas may, in fact, function as habitat islands and be critical to many species. Generally, the protection of wildlife habitat functions of wetlands requires larger buffers than protection of water quality functions, particularly when state-of-the-art stormwater management is employed.

However, the best way to address the issue of buffers in urban areas is to conduct a landscape analysis and develop a subarea plan that identifies, prioritizes, and protects the most important wetland, riparian, and upland habitats (see Chapters 5 through 7 of this volume for additional discussion). Maintaining and restoring connections between wetland, riparian, and upland habitats is key to protecting wildlife. A landscape analysis can help identify existing connections that should be protected as well as areas where connectivity can be restored. Combined with standards for low impact development and state-of-the-art stormwater management, this kind of approach could result in smaller buffers around the other critical areas that are not providing vital habitat. The studies

should always be confirmed on the ground during project review.

The issue of balancing wetland protection with competing mandates in the GMA is a legitimate one that can be addressed in a number of ways. A buildable lands survey with a good wetlands inventory can provide important information on the actual conflicts that may exist (rather than a perceived conflict). Provisions to allow density trading from buffers to adjacent or nearby developable lands can help.

Chapter 8, Section 8.3.8.8.

Where a legally established, non-conforming use of the buffer exists (e.g., a road or structure that lies within the width of buffer recommended for that wetland), proposed actions in the buffer may be permitted as long as they do not increase the degree of non-conformity. This means no increase in the impacts to the wetland from activities in the buffer.

For example, if a land use with high impacts (e.g., building an urban road) is being proposed next to a Category II wetland with a moderate level of function for habitat, a 150-foot buffer would be needed to protect functions (see Table 8C-6). If, however, an existing urban road is already present and only 50 feet from the edge of the Category II wetland, the additional 100 feet of buffer may not be needed if the road is being widened. A vegetated buffer on the other side of the road would not help buffer the existing impacts to the wetland from the road. If the existing road is resurfaced or widened (e.g., to add a sidewalk) along the upland edge, without any further roadside development that would increase the degree of non-conformity, the additional buffer is not necessary. The associated increase in impervious surface from widening a road, however, may necessitate mitigation for impacts from stormwater.

If, however, the proposal is to build a new development (e.g., shopping center) along the upland side of the road, the impacts to the wetland and its functions may increase. This would increase the degree of non-conformity. The project proponent would need to provide the additional 100 feet of buffer extending beyond the road or apply buffer averaging (see Section 8C.2.6).

Appendix 8-C, Section 8C.2.4.2.

5. [SMP Handbook, Chapter 11, Vegetation Conservation, Buffers, and Setbacks, Publication Number 11-06-010, Department of Ecology](#)

The following excerpts from this document should also be helpful:

Some local governments with intensely developed shorelines have established only setbacks from the OHWM. Vegetation conservation is required, and planting new vegetation, replacing noxious weeds and invasive plants with native plants, and other habitat improvements are required for new or expanded development. These measures meet the requirements of the SMP Guidelines to protect ecological functions, as buffers do.

SMP Handbook, 11-11, p. 3-4.

New scientific studies conducted after the CAO was adopted may establish the need for different-sized buffers than included in the CAO. The SMP Guidelines require “the most current, accurate and complete scientific and technical information available” to be used for development of SMPs [WAC 173-26-201(2)(a)].

SMP Handbook, 11-11, p. 4.

When SMPs were first adopted in the 1970s, setbacks were established largely to protect structures from

erosion and effects of wind and water and to prevent new houses from blocking views. Some consideration was given to habitat, as in Conservancy environments with bigger setbacks than in Urban environments. We now know more about the value of buffers in regard to ecological functions. Recent scientific studies show that 25-foot setbacks do not protect most ecological functions and will not meet the no net loss standard of the SMP Guidelines.

SMP Handbook, 11-11, p. 7.

How do you apply these buffer widths from the scientific literature to your local shorelines? Much of Washington's shorelines are developed, unlike the undeveloped shorelines discussed in much of the scientific literature.

Those land uses include industry, commercial uses, houses, multi-family dwellings, parks, trails, marinas, bulkheads, parking lots, and fishing piers, among others. Some upland areas are intensely developed, and others are more sparsely developed. Some of our waters are heavily used for ports, industry, marinas and recreational piers. Many Washington lakes are intensely developed with houses on the upland and piers and docks in the water, while others remain undeveloped.

Tailor buffers to local conditions

Determining buffers and setbacks is a challenge. The buffers and setbacks for marine and freshwater shorelines should be tailored to local conditions including existing shoreline functions and existing and planned land use and public access. Buffers and setbacks likely will vary within a local government's boundaries to reflect different shoreline conditions and functions. The inventory and characterization report should provide a complete analysis of shoreline functions.

SMP Handbook, 11-11, p. 19.

With this general guidance in mind, considerations for determining buffer and setback width include:

What shoreline ecological functions continue to exist and need protection or restoration?

What species of wildlife live along the shoreline, and what buffer width will protect them?

Would smaller buffers increase nitrogen and phosphorous levels in local waters?

How would removal of riparian vegetation affect slope stability and hydrology?

Will future growth include new or expanded water-oriented uses?

For developed shorelines, is redevelopment likely?

Is development projected on vacant parcels?

SMP Handbook, 11-11, p. 20.

6. [SMP Handbook, Chapter 14, Legally Existing Uses and Development, Publication No. 11-06-010, Department of Ecology](#)

The following excerpts from this chapter should be helpful:

Existing legally established structures and uses are typically allowed to continue with the approval of updated SMPs. That means they can continue to exist, be used, maintained and repaired. That's the case even if the updated SMPs include regulations that would not allow new uses or development to be configured or built exactly as existing ones.

For example, under updated SMPs, new buildings may need to be further away from the water, new development projects may need to retain some vegetation onsite, or new aquaculture projects may need to be a specific distance from aquatic vegetation. However, existing legal development and uses can remain in place.

Ecology and local governments do not expect most existing development and uses to be eliminated from the shoreline after new SMP regulations are adopted. In some cases, existing buildings may be expanded, although there may be limits to the size of the addition, the total square footage, or new impervious surfaces. ... *SMP Handbook, Chapter 14, pp. 1-2.*

Cities with densely developed shorelines may have fewer opportunities for achieving no net loss than cities or counties with less developed shorelines. With a densely developed shoreline, large buffers or setbacks may not be appropriate or feasible for various reasons - small lots cannot accommodate them; large buffers would include many structures and impervious surfaces that interfere with buffer functions; regulations regarding structures within buffers could be complicated. *SMP Handbook, Chapter 14, p. 3.*

Traditionally, uses and structures that are not consistent with the new regulations have been categorized as “nonconforming” development. Nonconforming uses and development were lawfully constructed or established, but do not conform to current land use regulations or standards. The regulation of nonconforming uses and development is an established concept, beginning early in the 20th century, when municipalities started enacting zoning regulations. *SMP Handbook, Chapter 14, p. 4.*

WAC 173-27-080 applies at the local level only if the local SMP does not address nonconforming development. *SMP Handbook, Chapter 14, p. 4.*

Some local governments are using different approaches as they update their SMPs. They would allow existing

structures, particularly single family residences, to continue as conforming structures even though new shoreline setbacks, buffers, and other regulations in their Shoreline Master Programs would typically create nonconforming structures.

SMP Handbook, Chapter 14, p. 5.

H. The City has taken significant steps toward restoration of the Edmonds marsh.

I. Ecology's Required Change 7 is a change to the 100/50 setback/buffer that the City had previously adopted for the UMU4 environment. The dimensions of this earlier adopted setback/buffer were heavily influenced by the city's desire to restore the Edmonds marsh and daylight Willow Creek and obtain funding for such restoration. While it is true that Appendix L alone may not support a 100-foot setback for the UMU4 shoreline environment, the weight placed on Appendix L by the city council demonstrates its commitment to restoration of the Edmonds marsh. It is relevant to determining buffers for the UMU4 that the city has a significant goal of restoring the Edmonds marsh and has been actively pursuing that goal through grant applications and studies.

J. As the City evaluates the existing conditions of the Edmonds marsh and the surrounding area within the UMU4 environment, it finds the Edmonds marsh to be a valuable environmental asset worthy of the City's ongoing restoration efforts. This value must be taken into account when evaluating the local conditions to which the buffers and setbacks for the UMU4 environment should be tailored.

K. It should be noted for the record that the city council on August 2, 2016 adopted Resolution 1366, which authorized the submission of another grant application to RCO related to the daylighting of Willow Creek. The December 18, 2015 final feasibility study for the daylighting of Willow Creek was the result of a successful grant application from 2013.

III. Conclusions of Law demonstrating the consistency of Alternative Changes 7 and 8 with the Shoreline Management Act and the Department of Ecology's adopted guidance

The Department of Ecology has adopted guidelines for Shoreline Master Programs. These guidelines are found in chapter 173-26 WAC, Part III (WAC 173-26-171 through WAC 173-26-251). Alternative Change 7 and 8 are consistent with these guidelines, particularly the following excerpts.

A. WAC 173-26-186(8)(b): Local master programs shall include policies and regulations designed to achieve *no net loss of [shoreline] ecological functions*.

The UMU4 buffer must be designed to achieve no net loss of ecological function, not only within the buffer, but more importantly, within the Edmonds marsh itself. While Harbor Square is already developed and the UMU4 buffer will render that development nonconforming, redevelopment of Harbor Square will presumably be more intense than the existing development. In the absence of additional wildlife habitat assessments and surveys demonstrating that no species in the Edmonds marsh requires more than a 50-foot buffer, the presumption should be that the habitat value of the marsh is consistent with other Category II estuarine wetlands. Because Ecology's guidance documents recommend a 110-foot buffer for a Category II estuarine wetland, that is the buffer that is required to achieve no net loss in the absence of additional wildlife habitat assessments and surveys.

B. WAC 173-26-186(8)(c): For counties and cities containing any shorelines with impaired ecological functions, master programs *shall include goals and policies that provide for restoration of such impaired ecological functions*.

The city is engaged in an ongoing effort to daylight Willow Creek, which will have a significant restorative benefit to the Edmonds marsh.

C. WAC 173-26-186(9): To the extent consistent with the policy and use preference of [RCW 90.58.020](#), this chapter (chapter 173-26 WAC), and these principles, ***local governments have reasonable discretion to balance the various policy goals of this chapter***, in light of other relevant local, state, and federal regulatory and nonregulatory programs, and to modify master programs to reflect changing circumstances.

The guidelines give the city reasonable discretion to balance various factors in the development of its SMP. The city, in adopting Alternative Change 7, has acted reasonably in basing the buffer for the UMU4 on Ecology's own guidance. The 110-foot buffer is consistent with the most recent guidance from Ecology related to buffers for Category II estuarine wetlands. Even if the Department of Ecology or the Port of Edmonds might have weighted the various policy goals differently, the guidelines give this discretion to the city.

D. WAC 173-26-201(2)(a): To satisfy the requirements for the use of ***scientific*** and technical information in [RCW 90.58.100\(1\)](#), local governments shall incorporate the following two steps into their master program development and amendment process.

1. First, ***identify and assemble the most current, accurate, and complete scientific and technical information available*** that is applicable to the issues of concern. ...

The city has identified Wetland Guidance for CAO Updates, *Western Washington Version*, June 2016, Publication No. 16-06-001, Department of Ecology, as the most current, accurate, and complete scientific information available. It has also identified other resources which are set forth in the findings of fact, above.

2. Second, ***base master program provisions on*** an analysis incorporating the most current, accurate, and complete scientific or technical information available. ...

Ecology agrees that the Edmonds marsh is a Category II estuarine wetland. The 110-foot buffer for the UMU4 comes directly from and is consistent with Wetland Guidance for CAO Updates, *Western Washington Version*, June 2016, Publication No. 16-06-001, Department of Ecology. The 50-foot buffer in Required Change 7 is not consistent with this recent guidance.

E. WAC 173-26-201(2)(d): ... local governments shall ... apply the following preferences and *priorities* in the order listed below ...

1. *Reserve appropriate areas for protecting and restoring ecological functions* to control pollution and prevent damage to the natural environment and public health. ... Local governments should ensure that these areas are reserved consistent with constitutional limits.

Note that there is no higher-ranking priority here than to reserve appropriate areas for protecting and restoring ecological functions. The UMU4 buffer can be seen as such a restoration. The fact that the existing development is allowed to continue indefinitely as a nonconforming use keeps this reservation firmly within constitutional limits.

F. WAC 173-26-221(2)(b)(i): When addressing critical areas, shoreline master programs shall adhere to the standards established in the following sections, *unless it is demonstrated through scientific and technical information* as provided in RCW 90.58.100(1) and as described in WAC 173-26-201 (2)(a) *that an alternative approach provides better resource protection*.

As a Category II estuarine wetland, the city must protect the Edmonds marsh by adhering to the standards for critical areas unless it is demonstrated through scientific information that an alternative approach provides better resource protection. The applicable standards here include Ecology's wetland guidance, which in turn calls for a 110-foot buffer for this class of wetland. In other words, the default UMU4 buffer should be 110 feet unless it is demonstrated through scientific and technical information that an alternative approach provides better resource protection. Ecology has not demonstrated through scientific and technical information that the 50-foot buffer from Ecology's Required Change 7 provides better protection for the Edmonds marsh than a 110-foot buffer. Ecology makes the point that untreated stormwater discharge is a significant threat to the marsh and that this threat could be corrected upon redevelopment of Harbor Square. Ecology's logic is that a 50-foot buffer will better incentivize redevelopment and redevelopment will fix the stormwater discharge. But this logic fails to address whether the habitat values of the Edmonds marsh would be adequately protected in the face of more intense redevelopment. It also fails to address the possibility that the stormwater problem could be corrected as a standalone stormwater improvement project that could be sponsored by

the city's stormwater utility and/or through a WRIA-8 or other grant sponsored project. Significant additional work would need to be done to determine whether a 50-foot buffer in the UMU4 could find scientific justification given the presumably high habitat value of the Edmonds marsh.

G. WAC 173-26-221(2)(b)(iv): The planning **objectives** of shoreline management provisions **for critical areas shall be** the **protection** of existing ecological functions and ecosystem-wide processes and **restoration** of degraded ecological functions and ecosystem-wide processes.

Shorelines with critical areas get special treatment under the SMA. With critical areas, the objectives are not merely protection (no net loss) but also restoration of degraded ecological functions. The city's goal is to restore both the Edmonds marsh and its degraded buffers. The 110-foot buffer for the UMU4 could become restored either through a standalone restoration project that would likely require city and port cooperation, through mitigation requirements to offset the impacts of more intense redevelopment, or potentially through a combination of the two.

H. WAC 173-26-221(2)(c)(i)(A): Local governments should consult the **department's technical guidance documents on wetlands**.

The 110-foot buffer for the UMU4 comes directly from and is consistent with Wetland Guidance for CAO Updates, Western Washington Version, June 2016, Publication No. 16-06-001, Department of Ecology. The 50-foot buffer in Ecology's Required Change 7 is not consistent with this recent guidance.

I. WAC 173-26-221(2)(c)(i)(D): Master programs shall contain requirements for buffer zones around wetlands. Buffer requirements shall be adequate to ensure that wetland functions are protected and maintained in the long term. Requirements for buffer zone widths and management shall take into account the **ecological functions of the wetland, the characteristics and setting of the buffer, the potential impacts associated with the adjacent land use, and other relevant factors**.

Wetland Guidance for CAO Updates, Western Washington Version, June 2016, Publication No. 16-06-001, Department of Ecology, addresses many of these factors. It provides different buffer widths for Category I estuarine wetlands

(150 feet) and Category II estuarine wetlands (110 feet), recognizing that Category I wetlands have greater ecological function. There is no lower category of estuarine wetland than Category II. This suggests that even when the wetland and buffer may have some suffered some degradation, an estuarine wetland should still be afforded protection consistent with a Category II wetland.

Ecology suggests that, because the Harbor Square portion of the UMU4 has already been developed, a narrow buffer of 50 feet is justified. We could not find support for this proposition in Wetland Guidance for CAO Updates, Western Washington Version, June 2016, Publication No. 16-06-001, Department of Ecology. If anything, that publication appears to state the opposite: **“Ecology’s buffer recommendations are also based on the assumption that the buffer is well vegetated with native species appropriate to the ecoregion.** If the buffer does not consist of vegetation adequate to provide the necessary protection, then either the buffer area should be planted or the buffer width should be increased.” *Id.*, at 13.

J. WAC 173-26-221(2)(c)(iii)(A): *Critical saltwater habitats require a higher level of protection* due to the important ecological functions they provide. Ecological functions of marine shorelands can affect the viability of critical saltwater habitats. Therefore, *effective protection and restoration of critical saltwater habitats should integrate management of shorelands* as well as submerged areas.

Critical saltwater habitats like the Edmonds marsh require greater protection than other critical areas. It is necessary to establish an appropriate buffer upon the shorelands of the UMU4 in order to be able to protect and restore these areas.

K. WAC 173-26-221(2)(c)(iii)(B): The management planning should address the following, where applicable: ... Protecting existing and restoring degraded riparian and estuarine ecosystems, *especially salt marsh habitats; Establishing adequate buffer zones around these areas to separate incompatible uses* from the habitat areas;

Here again, the guidance emphasizes that salt marsh habitats like the Edmonds marsh warrant special protection, even when they are somewhat

degraded and that a significant component of that special protection is the establishment of an adequate buffer to protect the special habitat provided by such ecosystems. It should be noted here that existing development within the UMU4 buffer does not make the habitat in the marsh unworthy of protection. It should also be noted that even if existing development already has some negative impact upon that habitat, redevelopment to a more intense use could have greater impact upon that habitat if the buffer were not increased adequately to protect the habitat from the more intense development.

L. **WAC 173-27-080 Nonconforming use and development standards.** When nonconforming use and development standards do not exist in the applicable master program,¹ the following definitions and standards shall apply:

1. 'Nonconforming use or development' means a shoreline use or development which was lawfully constructed or established prior to the effective date of the act or the applicable master program, or amendments thereto, but which does not conform to present regulations or standards of the program.
2. Structures that were legally established and are used for a conforming use but which are **nonconforming with regard to setbacks, buffers** or yards; area; bulk; height or density **may be maintained and repaired** and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses. ...

Portions of the Harbor Square development already exist within as little as 25 feet of the Edmonds marsh. Ecology has argued that this existing condition warrants a much smaller buffer than the 110-foot buffer called for by the guidance. Ecology argues, essentially, that the buffers should be sized to avoid any already developed property so that the existing development can retain its conforming status indefinitely. If the SMA intended this result,

¹ Note: the city's SMP does contain provisions for nonconforming use. The WAC is cited here to demonstrate what regulation Ecology would impose as a default if the city did not have its own nonconforming use regulation.

Ecology would not have needed to adopt the above shoreline nonconforming use rule. The fact that Ecology did adopt a nonconforming use rule renders this argument suspect.

Similarly, Ecology appears to argue that the SMA's no net loss standard provides not only the minimum amount of regulatory protection allowed, but also the maximum amount of regulatory protection allowed. This argument is not supported by the plain language of the guidance for shoreline master programs. In fact, the opposite is true, "these guidelines are designed to assure, **at minimum**, no net loss of ecological functions necessary to sustain shoreline natural resources and to plan for restoration of ecological functions where they have been impaired." WAC 173-26-201(2)(c) (emphasis added). The guidelines contain similar phrasing where they address wetland regulations. "Regulations shall address the following uses to achieve, **at a minimum**, no net loss of wetland area and functions, including lost time when the wetland does not perform the function..." WAC 173-26-221(2)(c)(i)(A) (emphasis added). In short, the plain language of the SMP guidance indicates that no net loss is the minimum standard that an SMP must achieve. Nowhere does the guidance suggest that Ecology should deny an SMP for going beyond this minimum standard.

IV. Consistency with the purpose and intent of Required Change 7

WAC 173-26-120(7)(b) outlines this stage of Ecology's review procedure:

If, in the opinion of the department, the alternative is consistent with the ***purpose and intent of the changes originally proposed*** by the department in this subsection (7) and with the policy of [RCW 90.58.020](#) and the ***applicable guidelines***, it shall approve the alternative changes and provide written notice to all parties of record. In such cases, the effective date of the approved master program or amendments is the date of the department's letter to local government approving the alternative proposal. If the department determines the alternative proposal is not consistent with the purpose and intent of the changes proposed by the department, the department may either deny the alternative proposal or at the request of local government start anew with the review and approval process beginning at WAC 173-26-120.

WAC 173-26-120(7)(b). We have demonstrated in Section III, above, how Alternative Change 7 is consistent with the applicable guidelines for SMPs. This section addresses consistency with the purposes and intent of Required Change 7. Certainly, the proposed buffers between Alternative Change 7 (110 feet) and Required Change 7 (50 feet) are significantly different, but that does not mean there is inconsistency between their purposes and intents. We look to the discussion in Ecology's June 27, 2016 Findings and Conclusions to discern the purpose and intent behind Required Change 7. We acknowledge, however, that, because Ecology does not succinctly state the purpose and intent behind Required Change 7, this exercise requires some paraphrasing and extrapolation on the part of the city. We believe the following four statements fairly summary Ecology's purpose and intent behind Required Change 7.

- 1. The city's originally adopted buffer of 50 feet was consistent with Ecology's Required Change 7 buffer of 50 feet. The real difference was in the amount of the setback, where the city originally adopted a 100-foot setback (or 50 feet from the edge of the buffer) and Required Change 7 proposed a 65 foot setback (or 15 feet from the edge of the buffer). Ecology notes that the city did not adequately support the additional 50-foot setback with scientific documentation and replaced it with the extra 15-foot setback, which is consistent with the city's critical areas ordinance. Ecology states: "A minimum 15-foot building setback would help preserve the integrity of a restored buffer. A larger setback may encourage intensive uses such as parking, which is incompatible within a buffer setback."**

Alternative Change 7 is consistent with the purpose and intent of Required Change 7 because both reflect the same setback (15 feet from edge of the buffer) that is contained in the city's critical areas ordinance. As Ecology notes, intensive uses such as parking, would no longer be encouraged by the larger 50-foot setback.

2. Ecology expressed concern about the city's reliance upon Appendix L to support the originally adopted buffer/setback of 50/100. In the table, Ecology states: "Ecology acknowledges the City Council amendments to the Planning Commission draft were based on a concern that buffers would be need to be 100 feet to be eligible for Ecology water quality grants. As noted in a letter from Ecology's Water program, a restoration project would be eligible based on the science-based planning commission setback of 50 feet (see letter from Ben Rau to Shane Hope, August 19, 2015)."

The city acknowledges that Appendix L is not the most relevant guidance for establishing a buffer width for a Category II estuarine wetland. In Alternative Change 7, the city has corrected its reliance upon Appendix L and now bases the buffer for the UMU4 environment on Wetland Guidance for CAO Updates, Western Washington Version, June 2016, Publication No. 16-06-001, Department of Ecology. The city believes this guidance to be the "*most current, accurate, and complete scientific and technical information available*," as required by WAC 173-26-201(2)(a). By basing Alternative Change 7 on this recent guidance instead of Appendix L, the city's alternative is consistent with the purpose and intent of Required Change 7.

3. Ecology's table regarding Required Change 7 cites to WAC 173-26-201(2)(c). That section of the guidelines contains the following language: "Nearly all shoreline areas, even substantially developed or degraded areas, retain important ecological functions. For example, an intensely developed harbor area may also serve as a fish migration corridor and feeding area critical to species survival. Also, ecosystems are interconnected. For example, the life cycle of anadromous fish depends upon the viability of freshwater, marine, and terrestrial shoreline ecosystems, and many wildlife species associated with the shoreline depend on the health of both terrestrial and aquatic environments. Therefore, the policies for protecting and restoring ecological functions generally apply to all shoreline areas, not just those that remain relatively unaltered." WAC 173-26-201(2)(c) (emphasis added).

Alternative Change 7 is consistent with the purpose and intent of Required Change 7 by recognizing the important applicability of the language above to

establishing the buffer for the UMU4 environment. While much of the UMU4 buffer area has been developed and degraded, this language, and Alternative Change 7, acknowledge that the Edmonds marsh retains important ecological functions that are worthy of being protected with a buffer that is consistent with Ecology's buffer guidance for a Category II estuarine wetland.

4. Required Change 7 may have been crafted to address the Port's concern about excess mitigation. The table cites WAC 173-26-201(2)(e), which contains the following language: "master programs shall also provide direction with regard to mitigation for the impact of the development so that: (A) Application of the mitigation sequence achieves no net loss of ecological functions for each new development and does not result in required mitigation in excess of that necessary to assure that development will result in no net loss of shoreline ecological functions and not have a significant adverse impact on other shoreline functions."

Mitigation is imposed at the project stage, not with the adoption of an SMP. Alternative Change 7 should not be construed as a mitigation requirement. Rather, it is an acknowledgement that the Edmonds marsh provides high value habitat that warrants the 110-foot buffer called for in Ecology's guidance documents. When the Port is ready to pursue a master planned redevelopment of Harbor Square, a more detailed analysis of the presence of wildlife and associated habitat will need to be performed to determine the extent to which the Edmonds marsh needs to be protected from the impacts of the master planned redevelopment. And that analysis will no doubt be informed by details about the project itself that are not currently known. At the project stage, it is possible that additional information about the species in the marsh and the nature of the project itself will lead to the conclusion that requiring a 110-foot buffer would be disproportionate to the actual impact of the project, in which case, the city might opt to incur part of the cost associated with establishing a 110-foot buffer as a city-sponsored restoration project. But at this planning stage, and without that critical additional information, it would be imprudent to establish a 50-foot buffer in the UMU4 environment. Furthermore, we doubt that a 50-foot buffer would be upheld under a no net loss challenge without this additional information. Therefore, to the extent that the purpose and intent of Required Change 7 was to address a concern about excess mitigation, Alternative Change 7 is not inconsistent with that concern in light of the discussion above.